

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Case No. 1:20-CR-512

UNITED STATES OF AMERICA

v.

BRADLEY CARL REIFLER

DEFENDANT'S RESPONSE TO
GOVERNMENT'S MOTION FOR A
DISCOVERY PROTOCOL ORDER

In response to the Government's Motion for a Discovery Protocol Order [DE 14], Mr. Reifler, through undersigned counsel, provides as follows.

The Government seized a vast amount of material from Mr. Reifler and his companies beginning in 2018. The Government's motion notes that a filter team was created at the request of the Prosecution Team in May 2020. Gov. Motion [DE 14] at 3. Mr. Reifler was first notified of the existence of a filter team at his arraignment on April 5, 2021. That same day, upon learning of the existence of a filter team, undersigned counsel requested that the Government cease any review of potentially privileged material.

It is Mr. Reifler's understanding that before Mr. Reifler was informed of the existence of a filter team, the Filter Team had nearly completed its review of the potentially privileged material and had already produced to the Prosecution Team the material the Filter Team deemed to be non-privileged. *See* Gov. Motion [DE 14] at 4.

Given the fact that the Government has already nearly completed its review of the potentially privileged material, the fact that the Filter Team has already produced to the Prosecution Team the material that the Filter Team determined was not privileged, and the fact that the review involves many millions of pages, Mr. Reifler did not oppose the Government's motion for entry of the Filter Team's protocol order. However, for the reasons the Court noted

in its Text Order dated May 21, 2021, Mr. Reifler does not believe that the process the Government utilized comports with the law in this circuit as set forth in *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 177 (4th Cir. 2019), *as amended* (Oct. 31, 2019). As such, while Mr. Reifler does not oppose the Government's motion, Mr. Reifler does not intend to waive potential challenges stemming from the Government's use of an Executive Branch filter team heretofore—for example, if the Filter Team's process (or any other review of the seized material by the Prosecution Team) resulted in the Prosecution Team receiving privileged material.

Ultimately, whatever prejudice (if any) that may have resulted from the Government's use of a filter team appears to have already occurred because the Government has already utilized this process for a year to review and disclose nearly all of the seized material at issue. Moreover, the Government has already produced to counsel for Mr. Reifler more than 12 million pages of documents—a volume too large for Mr. Reifler to review in a timely or cost-effective manner at this stage in the process. In light of the massive volume of material already reviewed by the Filter Team, Mr. Reifler did not want to delay further the completion of the Government's process. Instead, Mr. Reifler seeks to reserve his right to raise any available challenges from the Government's failure (if any) to appropriately segregate privileged materials based on its unilateral decision to utilize an Executive Branch filter team.

However, if the Court has concerns about the Government's proposal to complete its privilege review utilizing the proposed protocol, Mr. Reifler would consent to the appointment of a special master to oversee discovery consistent with *In re Search Warrant*, 942 F.3d at 177.

Respectfully submitted, this the 25th day of March, 2021.

CHESHIRE PARKER SCHNEIDER, PLLC

/s/ Elliot S. Abrams

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on the following by the CM/ECF system for the Middle District of North Carolina:

Meredith C. Ruggles

This the 25th day of May, 2021.

/s/ Elliot S. Abrams

Elliot S. Abrams